

**SUPERIOR COURT OF CALIFORNIA,**  
COUNTY OF SAN DIEGO  
HALL OF JUSTICE  
TENTATIVE RULINGS - December 22, 2011

EVENT DATE: 12/23/2011      EVENT TIME: 08:30:00 AM      DEPT.: C-62  
JUDICIAL OFFICER: Ronald L. Styn

CASE NO.: 37-2008-00075326-CU-CO-CTL

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE VS. THE CALIFORNIA GAMBLING CONTROL COMMISSION

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Contract - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion to Quash Subpoena, 11/28/2011

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Non-Party Chad Everone's motion for a protective order is denied.

Via the instant motion, Everone seeks reconsideration of this court's July 1, 2011 ruling on Plaintiff California Valley Miwok Tribe's motion to compel the deposition of Everone wherein the court also denied Everone's motion for a protective order.

Neither party addresses the issue of whether this motion for reconsideration is brought pursuant to CCP § 1008(a), which has a 10 day limit, or CCP § 1008(b) which has no such limit. Regardless, both subsections require that the party making the application submit an affidavit stating "what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown." Everone fails to submit a declaration with the requisite showing. Failure to do so renders Everone's motion for reconsideration invalid. See, *Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1048. Even if this court were to reconsider its previous ruling, the result would not change. The party moving for a protective order bears the burden of showing "good cause" for issuance of the protective order. See, *GT, Inc. v. Superior Court* (1984) 151 Cal.App.3d 748, 754. The court finds Everone fails to meet his burden. Plaintiff sufficiently establishes that Everone has knowledge of facts related to the issues in this case. Therefore, under the broad definition of relevant evidence [CCP §2017.010], the court finds the testimony of Everone relevant. The court rejects Everone's contention that the issues in this case are "moot." The court's previous rulings are based on decisions by Assistant Secretary Larry Echo Hawk of the United States Department of the Interior – Indian Affairs and the pending appeal of this decision in federal court. However, Everone fails to establish how the court's reliance on the decisions by the Assistant Secretary, and the pending appeal render this case moot. Such matters are related to Plaintiff's claims against the California Gambling Control Commission in this action, but do not render Plaintiff's claims moot. Everone fails to establish the application of the attorney-client privilege, tribal sovereign immunity or trade secret privilege to his deposition testimony. Although Everone refers to his 5th Amendment rights, Everone fails to establish how such rights preclude Plaintiff from taking his deposition. Everone fails to articulate how Plaintiff's ability to request documents under the Freedom of Information Act, precludes Plaintiff from taking his deposition. The court sustains Plaintiff's objections to the Declaration of William Pink and the attached transcript. Even if this evidence were admissible, Everone fails to establish how the alleged conduct of non-party Tiger Paulk towards other individuals precludes Plaintiff from taking his deposition. Everone states his concern for the "potential abuse of deposition information" but fails to establish such concern as grounds for a protective order.

Plaintiff's request for sanctions is granted. None of the arguments Everone makes has merit and many the arguments Everone makes have previously been rejected by the court. For these reasons, the court finds that this motion was made "without substantial justification." CCP § 1987.2(a). The court awards Plaintiff sanctions of \$3,000.00 and orders Everone to pay this amount to Plaintiff within 10 days of this ruling.